

Message Text

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FOR SCS

E.O. 11652: N/A
TAGS: CARR, AU
SUBJECT: LEGAL REPRESENTATION AVAILABLE TO AMERICANS ARRESTED
ABROAD

REF: STATE 147704

FOLLOWING IS OUR RESPONSE TO QUESTIONS RAISED REFTEL:

A. ACCORDING TO AUSTRIAN LAW, DEFENDANT IN CRIMINAL CASE, IRRESPECTIVE OF NATIONALITY, MAY APPLY TO JUDGE IN CHARGE OF CASE FOR APPOINTMENT OF GRATIS LEGAL COUNSEL IF UNABLE TO PAY FOR ATTORNEY. IF JUDGE SATISFIED THAT ACCUSED UNABLE RAISE FUNDS, HE ORDERS LOCAL CHAMBER OF ATTORNEYS (EQUIVALENT TO BAR ASSOCIATION) TO PROVIDE DEFENSE ATTORNEY. CHAMBER THEN CHOOSES ATTORNEY FROM AMONG ITS MEMBERS IN AREA. SELECTED ATTORNEY MUST REPRESENT DEFENDANT GRATIS.

B. GRATIS LEGAL REPRESENTATION AVAILABLE TO ALL WHO ARE FOUND BY AUSTRIAN COURT TO BE GENUINELY DESTITUTE. GIVEN PROCEDURE OUTLINED IN PARAGRAPH A, HOWEVER, IT OBVIOUS THAT ATTORNEY WILL NOT BE AVAILABLE ON THE SPOT. IN ANY EVENT, UNDER AUSTRIAN LAW DEFENDANT NOT ENTITLED TO HAVE ATTORNEY PRESENT AS LONG AS HE IS IN POLICE
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CUSTODY, UP TO 48 HOURS, AND SUBSEQUENTLY PENDING COMPLETION OF INVESTIGATION BY INVESTIGATIVE JUDGE. FURTHER, NATURE OF SELECTION PROCESS BY CHAMBER OF ATTORNEYS MAY RESULT IN DELAY OF WEEKS BEFORE APPOINTED DEFENSE COUNSEL VISITS DEFENDANT.

C. ATTORNEY APPOINTED BY CHAMBER IS REQUIRED UNDER

LIABILITY OF DISCIPLINARY ACTION TO DEFEND IN COURT THE
ACCUSED TO BEST OF HIS ABILITY. HE IS NOT EXPECTED,
HOWEVER, TO MAKE REGULAR PRE-TRIAL VISITS TO HIS CLIENT
IN JAIL, OR TO MAKE EXTRAORDINARY EFFORTS THROUGH
PRE-TRIAL MOTIONS FOR EXPEDITIOUS PROCESSING OF
INVESTIGATORY STAGE OF CASE AND RELEASE OF HIS CLIENT.
IT SHOULD BE NOTED THAT ATTORNEY APPOINTED FOR DEFENSE
OF DESTITUTE DEFENDANT RECEIVES NO REMUNERATION FOR HIS
EFFORTS ON BEHALF OF DEFENDANT. IN PRACTICE, PROMINENT
LAWYERS, IF APPOINTED, WOULD, WITH APPROVAL OF CHAMBER,
REFER CASE TO ANOTHER ATTORNEY.
IN GENERAL, GRATIS
LEGAL COUNSEL IS SATISFACTORY, BUT NOT OF STELLAR
QUALITY AND THEREFORE POSSIBLY LESS EFFECTIVE THAN PAID,
PRIVATE COUNSEL.MEEHAN

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